

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN W. PEROTTI,

Plaintiff,

v.

MS. MARLBERRY, ET AL.,

Defendants.

No. 05-60172

District Judge John Corbett O'Meara

Magistrate Judge R. Steven Whalen

ORDER FOR DEFENDANTS TO RESPOND

The Plaintiff has filed a Motion for Relief From and Objection to 'Taxed Costs' Denying him Filing Fee Costs [Docket #92], along with his Exhibit [Docket #93]. This motion flows out of Plaintiff's previous submission of a bill of costs to the Clerk's Office [Docket #88], and the Clerk's Office denial of costs [Docket #90]. More specifically, the Clerk's Office awarded costs in the amount of \$0. The "Clerk's Comments" section of the form order stated, "No court order allowing costs pursuant to Fed.R.App.P. 39." *Id.* There is some question, therefore, as to whether the present motion properly seeks reconsideration of the Clerk's denial of costs, or should be construed as an independent motion for costs addressed to the Court. Under E.D. Mich. L.R. 7.1(g), the standard of review is more stringent if it is a motion for reconsideration, and the Defendants are not required to file a response unless the Court orders them to do so.

Given Plaintiff's *pro se* status, and the Court's duty to construe his pleadings liberally, *see Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004), citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), the Court will construe his motion [Docket #92] not as a motion for reconsideration or a "motion for relief" from a previous order, but as an original motion for taxation of costs.

Defendants have not filed a reply to Plaintiff's motion, which is understandable, since it was titled as a motion for reconsideration. Based on my conclusion that this is more appropriately construed as a motion addressed to the Court in the first instance, I will therefore direct Defendants to file a response no later than 14 days from the date of this Order.

IT IS SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: February 17, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on February 17, 2010.

S/Gina Wilson
Judicial Assistant